

INTRA-AGENCY MEMORANDUM
KENTUCKY PUBLIC SERVICE COMMISSION

TO: File
Case No. 2003-00023

FROM: Amy E. Dougherty
Staff Attorney

DATE: April 11, 2003

RE: AT&T Broadband Phone of Kentucky, LLC
v. ALLTEL Kentucky, Inc. and Kentucky ALLTEL, Inc.

March 25, 2003 Informal Conference

Those persons whose names appear on the attached sign-in sheet met to discuss the three items complained of by AT&T Broadband.

The first issue regards indirect interconnection with third parties. AT&T Broadband has requested indirect interconnection with ALLTEL through a BellSouth tandem. According to AT&T Broadband, Section 2.2 of Attachment 4 of the Agreement between it and ALLTEL Kentucky provides for third party indirect interconnection. AT&T Broadband also asserts that indirect interconnection is mandated by 47 USC §251(a) and (c)(2) and by 47 CFR 51.703(b).

AT&T Broadband further contends that a decision made by the FCC in a Virginia arbitration case is consistent with its request for a point of interconnection, or POI. The FCC decision is called TSR Wireless.

The issue of indirect interconnection was discussed at length by Ken Rejba. Forty percent of insight cable is owned by Comcast, which recently acquired the interests of AT&T Broadband. Comcast has made tremendous investments of equipment in Kentucky including those exchanges serving Shepherdsville. Comcast seeks to use transit traffic transport from BellSouth to complete calls to Shepherdsville. This traffic would be transited to its POI at 523 Armory's physical co-location facility.

Calls originating with Comcast customers and terminating to ALLTEL customers or other Comcast customers are no problem. The calls which are the subject of this complaint are those in which ALLTEL customers are calling Comcast customers (and vice versa). The NPA-NXX codes for Comcast have not yet been loaded in ALLTEL's Shepherdsville central offices.

According to Rejba, Comcast is seeking some direct trunking and some indirect trunking transiting traffic through a BellSouth Tandem switch. There are two issues with the indirect trunking: a) whether the originating carrier should pay for the transport and to what point and b) the appropriate place for a POI for ALLTEL. Three diagrams used by Mr. Rejba to describe Comcast's transport issues are also attached.

In response to Comcast's arguments, ALLTEL indicated that the key criteria in resolving this matter was obtaining BellSouth's consent to transit traffic through its tandem switch. Also ALLTEL believes that its POI only need be within its local calling area boundary and that it would have no obligation to transport originating traffic outside of its calling area to a POI in Louisville selected by Comcast. ALLTEL asserted that it believed that Comcast's request for indirect interconnection was an interim arrangement until Comcast could order direct trunking and thereby bypass BellSouth's tandem switch.

Staff noted that the Commission had addressed similar issues in Case No. 2002-00143, a complaint case between Brandenburg Telecom and Verizon South and in the Level-3 arbitration proceeding.

The second issue discussed was AT&T Broadband's request to adopt the Verizon interconnection agreement pursuant to 47 USC §252(i). According to Comcast, the interconnection agreement between AT&T "Classic" and Verizon South was a three year agreement and should have been honored by ALLTEL pursuant to the Commission's Order in the transfer case between Verizon South and ALLTEL. Comcast sought to opt into the agreement and has been denied the opportunity by ALLTEL.

ALLTEL responds to Comcast's arguments indicating that the term had run out and that ALLTEL was terminating the agreement with 90 days notice. Further, ALLTEL asserts that the party to the agreement, AT&T Classic, was not operating pursuant to the agreement and chose not to negotiate a new agreement with ALLTEL. However, ALLTEL is accepting requests for porting numbers from Comcast and is terminating Comcast's traffic in the Lexington exchanges. ALLTEL says that it has offered various options including the Shepherdsville agreement for Comcast to adopt. However, Comcast wants the Verizon agreement because of its depth of detail and because of its pricing. At a minimum Comcast wants the Verizon agreement with AT&T Classic to be used as the starting point for negotiations. According to Comcast, pricing is the basic issue. During the informal conference ALLTEL offered to accept the pricing in the Verizon agreement for a period of time.

Staff asked that both parties clarify which contract they believed they were operating under and whether they believed the cases mentioned by staff are relevant to this proceeding.

The informal conference concluded without a discussion of the third issue regarding dual billing. It was agreed that the parties would reconvene the informal conference on April 7, 2003 via teleconference.

April 7, 2003 Informal Conference

As agreed, on April 7, 2003 a telephonic informal conference was convened to follow up on the March 25, 2003 informal conference. Staff present were Amy Dougherty, Eric Bowman, Jim Stevens, and Jeb Pinney. Loretta Cecil, Dave Sered, and Greg Cioffi represented Comcast. Steve Rowell, Steve Refsell, Alfred Busbee, Steve Byars, Steve Mowery, and Jim Newberry represented ALLTEL. Dorothy Chambers and Doug Lackey represented BellSouth.

For Comcast, Loretta Cecil discussed filings made since March 25, 2003. These are attached to this memo. She discussed Comcast's need to adopt the Verizon agreement in greater detail. ALLTEL had requested AT&T Broadband look at the Shepherdsville interconnection agreement. AT&T Broadband adopted the interconnection agreement between AT&T of the South Central States and ALLTEL Kentucky, Inc. (Shepherdsville) This was signed two weeks ago. The matter was docketed as Case No. 2003-00022 at the Commission and an order approving the opt-in has been issued. In response to questions raised at the first informal conference regarding the agreement with the Lexington market, Comcast proposes a settlement to address whether the Verizon agreement was in effect or whether it should be opted into and to address the terms and conditions needed in the Shepherdsville agreement to be more appropriate for Lexington. Thus, Comcast proposed a settlement of this issue with the following conditions. Comcast will accept the Shepherdsville agreement for the Lexington market with two provisos. Comcast will accept the terms and conditions in the Shepherdsville agreement but will price the services according to the old Verizon agreement. The parties will negotiate for a 45 day period of time. The agreement will be for a minimum of 3 years. The parties will review other terms and conditions from the Verizon agreement with the idea of possibly supplementing the Shepherdsville agreement. At the end of the 45 days if there are still disputes, then the parties would agree that Commission staff should join the parties and try to finalize an agreement within 30 days without docketing a case. According to Comcast, it cannot now afford a full length negotiation or arbitration proceeding.

Mr. Rowell of ALLTEL says that ALLTEL agrees to this settlement pending a review of the language involved. Mr. Sered and Mr. Busbee will be doing the negotiations required by the settlement.

We then continued discussing the indirect interconnection issue. Comcast reviewed the Level-3 arbitration proceeding and the Brandenburg v. Verizon complaint proceeding. In light of those Orders, Comcast does not now believe that its right to indirect interconnection is even an issue. ALLTEL should immediately open up the AT&T Broadband codes for the completion of calls.

In response, Mr. Retsell of ALLTEL indicates that ALLTEL agrees that the Orders do apply, however, ALLTEL in Shepherdsville has no LATA-wide tandem and no LATA-wide calling area. Thus, according to ALLTEL, the Orders are not specifically on point. Moreover, ALLTEL Kentucky (the Shepherdsville operations) have less than 2 percent of the access lines and, thus, the rural exemption applies.

According to Doug Lackey of BellSouth, BellSouth is willing to provide for the transiting of calls with ALLTEL and with AT&T Broadband. AT&T Broadband already has an arrangement with BellSouth, but would need an interconnection agreement with ALLTEL. BellSouth further indicated that it would handoff traffic at the POI. Mr. Rowell of ALLTEL asked how the traffic could be identified.

AT&T Broadband indicated that it wants an emergency order to require ALLTEL to open the codes. If the Commission cannot establish an appropriate true-up mechanism then all three parties, Comcast, ALLTEL and BellSouth, should submit a true-up mechanism plan and allow the PSC to pick one. Whether the traffic could be appropriately segregated was also asked.

The third issues discussed was the dual billing complaint. The problem arises when AT&T Broadband successfully markets a customer in the old Verizon area. If there is a difference in time between when the number is ported and the firm order confirmation, or FOC date then AT&T begins to bill the customer when it begins to provide service and ALLTEL continues to bill the service until the FOC date. A customer has received a dual billing for a 24 to 48 hour period of time.

According to ALLTEL, the FOC date is the historical date used to change billing. To accommodate CLEC's ALLTEL has enabled the port ahead of time for the provision of testing only. CLEC's, according to ALLTEL, should avoid the issue by not billing for services until the FOC date. Moreover, ALLTEL argues that it would have to manually check its ports to determine whether porting of the number occurred before the FOC date.

The teleconference was concluded with a discussion of the emergency ruling request of AT&T. ALLTEL asserts that it is entitled to a hearing prior to a ruling on the request. AT&T indicates that a hearing this week or next would be fine. ALLTEL agreed to submit written responses to Staff's requests about which contract the parties are operating under and about the relevance of the Level-3 proceeding and the Brandenburg v. Verizon South complaint. Also, ALLTEL is to respond in writing to Comcast's settlement offer. The conference was concluded.

Attachments

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AT&T BROADBAND PHONE OF KENTUCKY, LLC

VS.

ALLTEL KENTUCKY, INC. AND
KENTUCKY ALLTEL, INC.

CASE NO.
2003-00023

INFORMAL CONFERENCE

March 25, 2003

PLEASE SIGN IN:

NAME

REPRESENTS

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PSC

DAN SANDERS

Comcast

J.E.B. Pinney

PSC

J. Alison Jenkin

Comcast

Loretta A. Cecil

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+ Rice

Kenneth Rejba

Comcast
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ALLTEL

Larry Harley

KY PSC

Jim Stevens

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PLEASE SIGN IN:

NAME

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Ugatt/ALLTEL

Stephen Rowell

ALLTEL

Stephen Refsell

ALLTEL

Dorothy Chambers

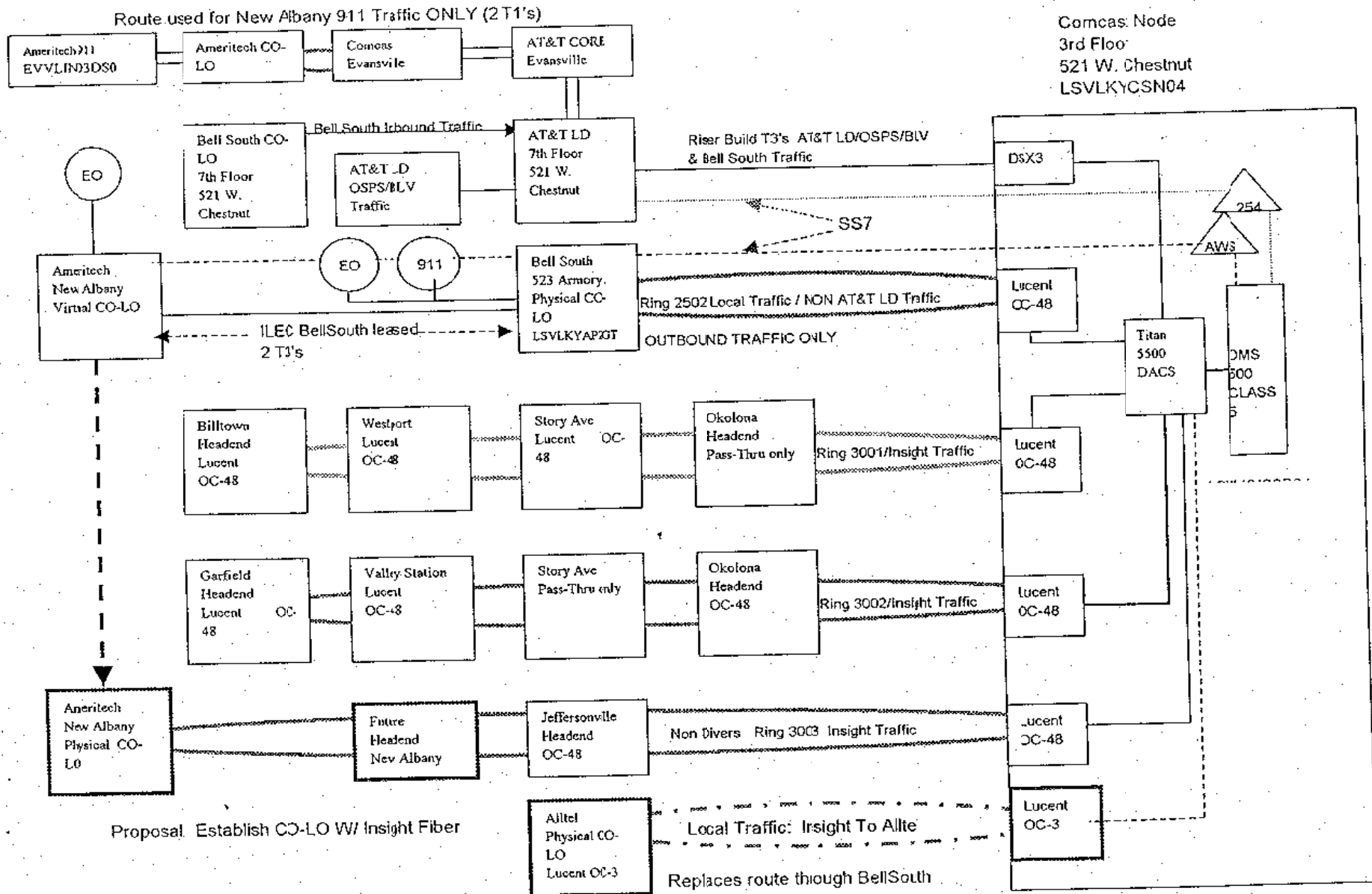
Bell/South

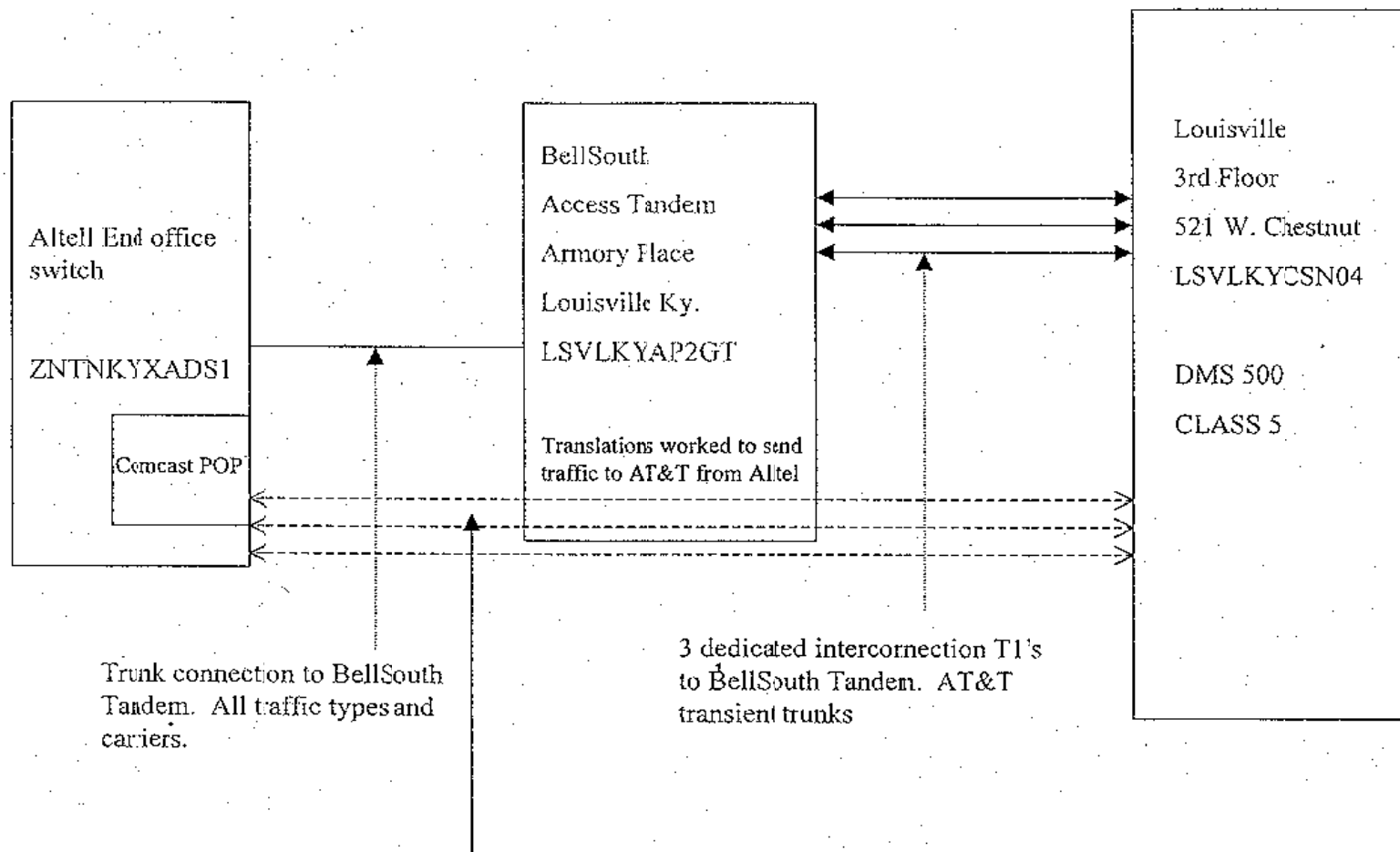
Joan Coleman

Bell/South

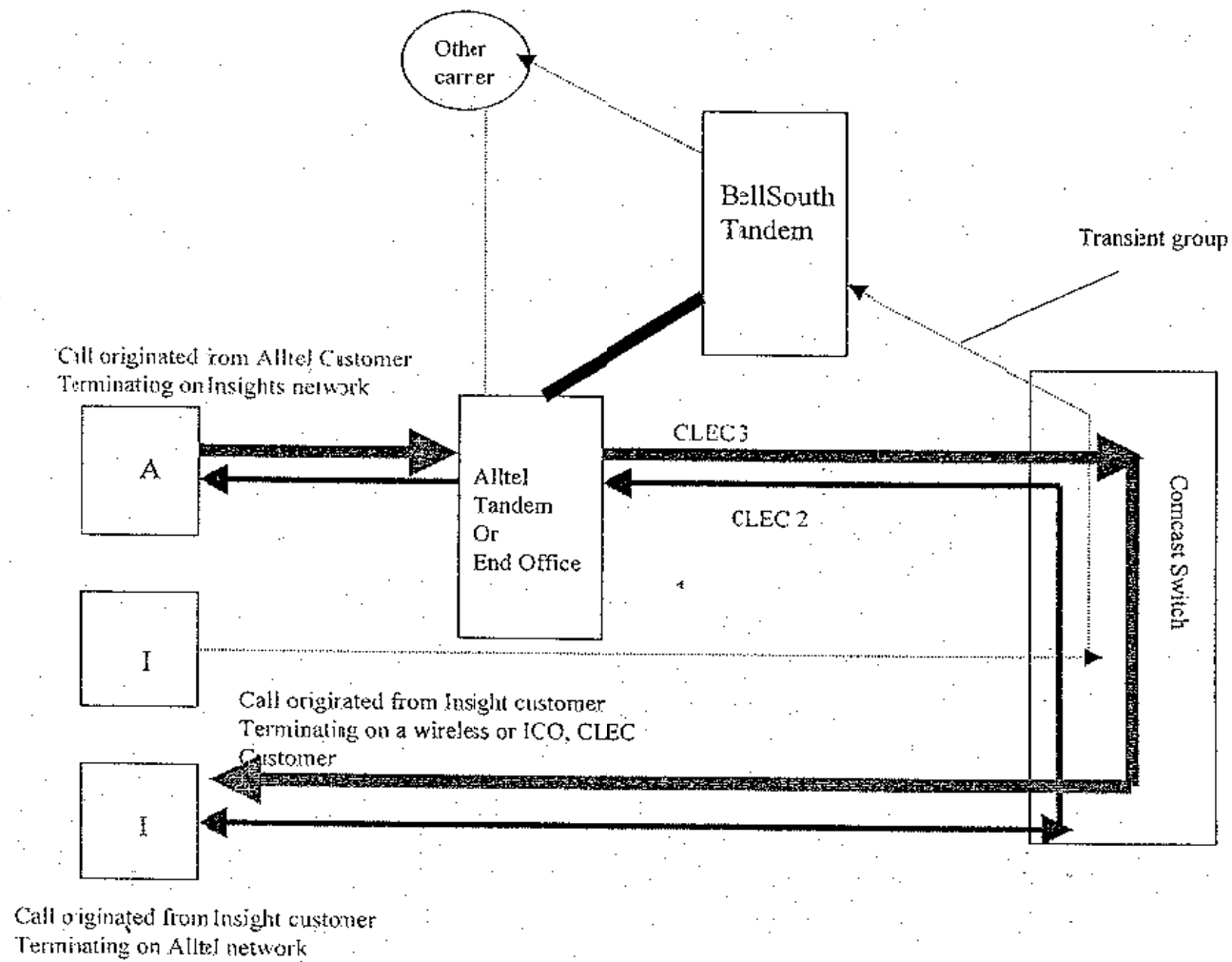
Eric C. Buser

PSC Staff





Proposed solution: Purchase Access T1's from BellSouth from Comcast POP through Armory Place To Altel at Zonton. Two way trunking. Altel provided CFA at Zonton.

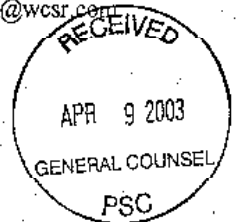


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April 4, 2003

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Re: *AT&T Broadband Phone of Kentucky, LLC ("AT&T Broadband")*
v. ALLTEL Kentucky, Inc., et al ("ALLTEL"); Case No. 2003-00023

Dear Ms. Dougherty:

During the informal conference held by the Commission in this proceeding on March 25, 2003, you requested that by April 4, 2003 the Parties respond to the following:

- (1) the Commission's Orders in Case No. 2000-404, Petition of Level 3 Communications, LLC For Arbitration Against BellSouth Telecommunications, Inc.; and Case No. 2001-224, Petition of Brandenburg Telecom LLC For Arbitration Against Verizon South Inc.;
- (2) at what "threshold" of traffic AT&T Broadband might consider direct interconnection with ALLTEL; and
- (3) the parameters for a "true-up" arrangement in the event the Commission immediately orders ALLTEL to enter AT&T Broadband's codes in ALLTEL's switch(es) so that AT&T Broadband customers may begin making calls to ALLTEL's customers, but thereafter rules against AT&T Broadband in its complaint.

AT&T Broadband greatly appreciates the Commission's efforts to assist with the resolution of AT&T Broadband's complaint. Therefore, we welcome the opportunity to respond to the foregoing inquiries.

First, relative to the Commission's inquiry regarding Orders in Case Nos. 2000-404 and 2001-404, both Orders unequivocally support AT&T Broadband's right to select one point of interconnection ("POI") per LATA.

Moreover, in the event AT&T Broadband selects a POI that is not in ALLTEL's local calling area, both Orders also support AT&T Broadband's position that ALLTEL is obligated for all costs associated with delivering its originating traffic from the edge of its "local calling area" to the POI selected by AT&T Broadband. The only caveat in both Orders is that once the competing local exchange carrier's ("CLEC's") traffic passing through a third party tandem switch reaches a "DS-3" level, the CLEC then is required to establish a second POI in the LATA.

Second, relative to the Commission's inquiry regarding at what "threshold" AT&T Broadband might consider direct interconnection, AT&T Broadband would be willing to consider direct interconnection once its originating traffic passing through BellSouth's tandem switch in Louisville reaches a "DS-3" level. However, in such event AT&T Broadband still would have the right to select one POI per LATA and ALLTEL still would be obligated for all costs associated with delivering its originating traffic from the edge of its "local calling area" to the POI selected by AT&T Broadband. Additionally, all such traffic exchanged between the Parties would be at reciprocal compensation rates.

AT&T Broadband makes the foregoing "DS-3" representation relative to direct interconnection without waiving any of its rights under the interconnection agreement currently in effect with ALLTEL for Shepherdsville ("Shepherdsville Interconnection Agreement"). As set forth in AT&T's complaint, under the terms of the Shepherdsville Interconnection Agreement, AT&T Broadband is entitled to indirect interconnection with ALLTEL regardless of the level of AT&T Broadband's originating traffic which passes through BellSouth's or any other third party's tandem switch.

Third, relative to the Commission's "true-up" inquiry, currently under the Shepherdsville Interconnection Agreement, with indirect interconnection AT&T Broadband and ALLTEL each are responsible for paying transit charges to the third party tandem provider for its originating traffic. In this case, BellSouth would be the third party tandem provider transiting traffic through its Louisville tandem switch.

If the Commission orders ALLTEL immediately to enter AT&T Broadband's codes into ALLTEL's switch(es) so that AT&T Broadband's customers can make calls to ALLTEL's customers, each carrier would be responsible for paying BellSouth's transit charges for its originating traffic. Obviously, BellSouth would charge (and provide call details) to ALLTEL for all such transit charges which BellSouth incurs relative to transiting ALLTEL's originating traffic through BellSouth's tandem switch.

Thereafter, in the event the Commission rules against AT&T Broadband in its complaint relative to indirect interconnection, under a "true-up" arrangement AT&T Broadband would be responsible for reimbursing ALLTEL for its transit charges paid to BellSouth, less (1) any costs ALLTEL would have incurred for transporting its traffic to the POI selected by AT&T Broadband in a direct interconnection arrangement, and (2) reciprocal compensation to be paid by ALLTEL to AT&T Broadband for transporting and terminating ALLTEL's originating traffic in a direct interconnection arrangement.

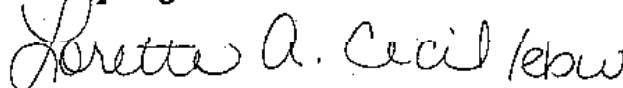
Thus, any such "true-up" assumes that even if the Commission rules against AT&T Broadband relative to its indirect interconnection complaint, in any direct interconnection arrangement so ordered by the Commission in lieu thereof, AT&T Broadband still would be entitled to select a single POI per LATA and ALLTEL still would be responsible for transporting its originating traffic to that POI consistent with the Commission's Orders discussed above. For planning purposes, the Commission and ALLTEL should assume that AT&T Broadband would select BellSouth's Louisville tandem switch as the POI in any such direct interconnection arrangement.

We look forward to further discussions with you and members of the Commission's staff about these and other issues during our next scheduled call on Monday, April 7, 2003 at 2 PM (EST). We are most hopeful that at a minimum the Commission will provide emergency relief to AT&T Broadband at this meeting in the form of ordering ALLTEL immediately to enter AT&T Broadband's codes into ALLTEL's switch(es) so that AT&T Broadband can bring local competition to consumers in Shepherdsville, just like AT&T Broadband has done for over 20,000 consumers in Louisville and Lexington.

Again, many thanks to you and the members of the Commission's staff for your assistance.

Sincerely yours,

WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability
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April 8, 2003

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Re: *AT&T Broadband Phone of Kentucky, LLC ("AT&T Broadband")*
v. ALLTEL Kentucky, Inc., et al ("ALLTEL"); Case No. 2003-00023

Dear Ms. Dougherty:

This confirms the offer made on April 7, 2003 during an informal conference with the Commission resolving AT&T Broadband's count in the above referenced complaint regarding ALLTEL's failure to allow AT&T Broadband to "opt-into" the interconnection agreement between GTE of the South, Inc. and AT&T of the South Central States, Inc. (the "GTE Agreement") under Section 252(i) of the Telecommunications Act of 1996 (the "Act"). (All other counts in AT&T Broadband's complaint remain unresolved.) The terms of this resolution as agreed to by both AT&T Broadband and ALLTEL are as follows:

1. ALLTEL agrees that the terms of the interconnection agreement recently executed between AT&T Broadband and ALLTEL relative to Shepherdsville, Kentucky (the "Shepherdsville Agreement") also will govern between the parties relative to Lexington, Kentucky, except that prices for the Lexington market shall be the same as in the GTE Agreement and not in the Shepherdsville Agreement.

2. During the next 45 days, ALLTEL and AT&T Broadband agree to negotiate in good faith as to whether other terms from the GTE Agreement also should be substituted for and/or added to the Shepherdsville Agreement relative to Lexington, Kentucky.

3. If, at the end of this 45 day period, the parties have reached agreement on all outstanding issues, then the parties shall execute an interconnection agreement for Lexington which incorporates all such terms, including prices

from the GTE Agreement as mentioned in 1 above. The minimum term for such interconnection agreement shall be three years.

4. If, at the end of this 45 day period, the parties are unable to reach agreement as to whether other terms from the GTE Agreement should be substituted for and/or added to the Shepherdsville Agreement relative to Lexington, Kentucky, the parties agree to seek informal assistance from the Commission to resolve all such outstanding issues during a 15 day period.

5. The parties are hopeful that with the Commission's informal assistance during this 15 day period that all outstanding issues will be resolved and the parties will be able to execute an interconnection agreement for Shepherdsville as contemplated in 3 above.

I am sure that the Commission appreciates that this resolution represents a significant concession by AT&T Broadband in the spirit of compromise and that it is made without any admission on the part of AT&T Broadband that ALLTEL is not obligated to allow "opt-in" of the GTE Agreement as alleged in AT&T's complaint.

With respect to compromise, after two informal meetings with the Commission, it should be readily apparent that ALLTEL is not willing to provide AT&T Broadband with indirect interconnection (except with a point of interconnection in ALLTEL's local calling area) even though such is expressly authorized by the Act, as well as the terms of the Shepherdsville Agreement. Moreover yesterday, after having been involved in discussions with ALLTEL since September 2002 regarding indirect interconnection, we learned for the first time that ALLTEL alleges that the express agreement which it made in Section 2.2 of Attachment 4 of the Shepherdsville Agreement relative to indirect interconnection only was made by ALLTEL "to the extent allowed by federal law." And this statement was made only after I asked ALLTEL to address the express provisions of the Shepherdsville Agreement. Also, for the first time yesterday, ALLTEL also advised both AT&T Broadband and the Commission that it is asserting "rural exemption" status to avoid its interconnection obligations in Kentucky.

Neither of these defenses were plead in ALLTEL's answer filed in this proceeding. As I discussed during yesterday's informal conference, ALLTEL clearly waived any "rural exemption" defense when it failed to petition the Kentucky Commission for a rural exemption upon first receiving notice from AT&T of the South Central States, LLC of its intent to negotiate an interconnection agreement under Section 252 of the Act. Such negotiations eventually led to execution of the Shepherdsville Agreement which contains the

indirect interconnection obligation which AT&T Broadband now seeks to enforce based on the express provisions of the Shepherdsville Agreement. In this respect, AT&T Broadband's complaint is to enforce the express terms of an interconnection agreement, not to go through an arbitration with ALLTEL or other policy debate.

I raise these issues to emphasize the frustration experienced by AT&T Broadband in trying to enter the Shepherdsville market. AT&T Broadband tried for several months to resolve the issue before bringing this matter to the Commission's attention. Our complaint now has been pending for almost three months and we still have no emergency relief from the Commission requiring ALLTEL to enter AT&T Broadband's codes in ALLTEL's switches so that AT&T Broadband's and ALLTEL's customers may exchange traffic.

In this respect, although not compelled to do so, AT&T Broadband also has gone the proverbial "extra mile" and agreed to "hold harmless" ALLTEL in a "true-up" arrangement in the event the Commission rules against AT&T Broadband regarding its indirect interconnection complaint. Apparently, even that has not been good enough to allow AT&T Broadband to bring local competition to Shepherdsville.

AT&T Broadband is fully prepared and welcomes the opportunity to proceed with its complaint. However, in the meantime, given that the complaint will take many additional months, if not years, to resolve, AT&T Broadband respectfully requests that the Commission immediately rule on AT&T Broadband's petition for an emergency order relative to ALLTEL entering AT&T Broadband's codes into ALLTEL's switches. If the Commission agrees with ALLTEL that the Commission does not have jurisdiction to issue such an emergency order until ALLTEL has had the opportunity for a hearing, then please let us know the soonest available date when such hearing can be held. As I mentioned yesterday, we are prepared to attend any such hearing this week or next.

Thank you for your assistance and we look forward to your response.

Sincerely yours,

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Loretta A. Cecil

Cc: Stephen B. Rowell, Esq., ALLTEL
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